

FACT SHEET #17

Voluntary Remediation Program (VRP) | (307) 777-7752 | <http://deg.state.wy.us/volremedi/index.asp>



Covenant Not To Sue

In its 2000 session, the Wyoming Legislature created new opportunities, procedures, and standards for voluntary remediation of contaminated sites. These provisions, enacted as Articles 16, 17, and 18 of the Wyoming Environmental Quality Act and implemented by the Wyoming Department of Environmental Quality (DEQ), will govern future environmental cleanups in Wyoming.

The Voluntary Remediation Program (VRP) establishes a number of new opportunities for owners, operators, and prospective purchasers of environmentally suspect, contaminated and formerly contaminated property to obtain a liability assurance from DEQ. This Fact Sheet summarizes the requirements and procedures for one type of liability assurance: covenant not to sue.

1. What is a covenant not to sue?

Under §35-11-103(g)(iv) a covenant not to sue is a written document issued by the director of DEQ stating that the State shall not sue the person to whom the covenant is issued, or any subsequent owner of the subject property, concerning contaminants and liability addressed by a remedy agreement. Therefore, if a covenant not to sue is issued, DEQ will not issue a unilateral cleanup order for contamination addressed by a remedy agreement as long as a Volunteer is in compliance with the remedy agreement.

2. When is a covenant not to sue issued?

Covenants not to sue are issued while cleanup is ongoing, to Volunteers who are implementing a remedy agreement. A covenant not to sue can be issued at any point after a remedy agreement is in place, provided the Volunteer is in compliance with the remedy agreement. In addition, covenants not to sue are contingent on a Volunteer remaining in compliance with the remedy agreement.

After Volunteers complete cleanup according to the terms of a remedy agreement, a covenant not to sue might be complemented by a certificate of completion or, in limited circumstances, a no further action letter. In general, certificates of completion and no further action letters are issued at the end of cleanup to record DEQ's determination that all remediation requirements have been satisfied. For more information about other VRP liability assurances see Fact Sheet #15 *Liability Assurances*, Fact Sheet #18 *Certificates of Completion*, and Fact Sheet #16 *No Further Action Letters*.

3. Who can receive a covenant not to sue?

Covenants not to sue can be issued to owners or prospective purchasers of VRP sites covered by a remedy agreement, provided the applicant is in compliance with the remedy agreement. Once issued, a covenant not to sue extends to any subsequent site owner, so long as the subsequent owner remains in compliance with the remedy agreement.

4. Do I have to be in the VRP before I can get a covenant not to sue?

Yes, VRP liability assurances, including covenants not to sue, are only available to people who have volunteered for the Program.

5. How do I request a covenant not to sue?

Covenants not to sue must be requested from DEQ in writing.

Two copies of your written request should be sent to:

Wyoming Department of Environmental Quality
Attention: Voluntary Remediation Program
122 West 25th Street, Herschler Building 4-W
Cheyenne, WY 82002

Your request should clearly identify the site for which you are requesting a covenant not to sue and identify your remedy agreement.

6. Will the covenant not to sue transfer to subsequent property owners?

Yes, in accordance with §35-11-1607(g), a covenant not to sue will extend to subsequent property owners. For the covenant to remain valid, however, subsequent owners must comply with the remedy agreement.

7. How can I get more information about the VRP?

To learn about VRP sites that may exist in your community, obtain copies of other VRP Fact Sheets/guidance documents, get answers to your questions, or volunteer for the program, contact DEQ at (307) 777-7752 or visit the VRP website at: <http://deq.state.wy.us/volremedi/index.asp>.

The VRP website includes all of the Fact Sheets and other guidance documents for the VRP. This website is updated frequently and includes the latest information about DEQ's progress in developing guidance, policy, and other supporting documents for the VRP.